

John J. Verber, State Bar No. 139917
BURNHAM BROWN
A Professional Law Corporation
P.O. Box 119
Oakland, California 94604

1901 Harrison Street, 11th Floor
Oakland, California 94612
Telephone: (510) 444-6800
Facsimile: (510) 835-6666

Attorneys for Defendant
JOHN GUTIERREZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UHURU COOPER,

Plaintiff,

v.

CITY OF OAKLAND, a municipal
corporation; Richard Word, Individually and
in his capacity as Chief of Police for the City
of Oakland; JOHN GUTIERREZ,
individually and in his capacity as a police
officer for the City of Oakland, DOES 1-100,
inclusive,

Defendants.

No. C 02 5926 MHP

DEFENDANT JOHN GUTIERREZ'S
ANSWER TO COMPLAINT FOR
DAMAGES (42 U.S.C. SECTIONS 1983,
1985, 1986)

Defendant John Gutierrez ("Defendant") answers the complaint for damages filed by
Plaintiff Uhuru Cooper ("Plaintiff") and demands a jury trial as follows:

JURISDICTION

1. As to paragraph 1 of the complaint, Defendant admits that this Court has
jurisdiction over the claims asserted in the complaint.

INTRADISTRICT ASSIGNMENT

2. As to paragraph 2 of the complaint, Defendant admits that venue and assignment
lies in the United States District Court for the Northern District of California, San Francisco
Division.

PARTIES

3. As to paragraph 3 of the complaint, Defendant lacks information or belief sufficient to enable him to answer this paragraph and based on this lack of information and belief denies the allegations therein.

4. As to paragraph 4 of the complaint, Defendant admits the allegations contained therein.

5. As to paragraph 5 of the complaint, Defendant admits that Richard Word is the Chief of Police for the City of Oakland. As to the remaining allegations contained in this paragraph, Defendant lacks information or belief sufficient to enable him to answer this paragraph, and, based on this lack of information and belief, denies the allegations therein.

6. As to paragraph 6 of the complaint, Defendant admits that he is a police officer for the City of Oakland.

7. As to paragraph 7 of the complaint, this paragraph contains statements and conclusions of law to which no response is required. To the extent that this paragraph contains factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations and, on that basis, denies generally and specifically each and every allegation.

8. As to paragraph 8 of the complaint, Defendant admits that at all times he was acting within the course and scope of his employment as a police officer for the City of Oakland. As to the other Defendants, Defendant lacks information or belief sufficient to enable him to answer the allegations and, on that basis, denies generally and specifically, each and every allegation.

9. As to paragraph 9 of the complaint, Defendant lacks information or belief sufficient to enable him to answer this paragraph and based on this lack of information and belief denies the allegations therein.

10. As to paragraph 10 of the complaint, Defendant denies the allegations as they pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to enable him to answer the allegations and, on that basis, denies generally and specifically each and every allegation.

STATEMENT OF FACTS

11. As to paragraph 11 of the complaint, Defendant denies the allegations as they pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to enable him to answer the allegations and, on that basis, denies generally and specifically each and every allegation.

12. As to paragraph 12 of the complaint, Defendant denies the allegations as they pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to enable him to answer the allegations and, on that basis, denies generally and specifically each and every allegation.

13. As to paragraph 13 of the complaint, Defendant denies the allegations as they pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to enable him to answer the allegations and, on that basis, denies generally and specifically each and every allegation.

14. As to paragraph 14 of the complaint, Defendant denies the allegations as they pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to enable him to answer the allegations and, on that basis, denies generally and specifically each and every allegation.

15. As to paragraph 15 of the complaint, Defendant lacks information or belief sufficient to enable him to answer this paragraph and based on this lack of information and belief denies the allegations therein.

16. As to paragraph 16 of the complaint, Defendant lacks information or belief sufficient to enable him to answer this paragraph and based on this lack of information and belief denies the allegations therein.

17. As to paragraph 17 of the complaint, Defendant lacks information or belief sufficient to enable him to answer this paragraph and based on this lack of information and belief denies the allegations therein.

///

///

1 18. As to paragraph 18 of the complaint, Defendant lacks information or belief
2 sufficient to enable him to answer this paragraph and based on this lack of information and belief
3 denies the allegations therein.

4 19. As to paragraph 19 of the complaint, Defendant lacks information or belief
5 sufficient to enable him to answer this paragraph and based on this lack of information and belief
6 denies the allegations therein.

7 20. As to paragraph 20 of the complaint, Defendant denies the allegations as they
8 pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to
9 enable him to answer the allegations and, on that basis, denies generally and specifically each
10 and every allegation.

11 21. As to paragraph 21 of the complaint, Defendant lacks information or belief
12 sufficient to enable him to answer this paragraph and based on this lack of information and belief
13 denies the allegations therein.

14 22. As to paragraph 22 of the complaint, Defendant lacks information or belief
15 sufficient to enable him to answer this paragraph and based on this lack of information and belief
16 denies the allegations therein.

17 23. As to paragraph 23 of the complaint, Defendant lacks information or belief
18 sufficient to enable him to answer this paragraph and based on this lack of information and belief
19 denies the allegations therein.

20 24. As to paragraph 24 of the complaint, Defendant lacks information or belief
21 sufficient to enable him to answer this paragraph and based on this lack of information and belief
22 denies the allegations therein.

23 25. As to paragraph 25 of the complaint, Defendant denies the allegations as they
24 pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to
25 enable him to answer the allegations and, on that basis, denies generally and specifically each
26 and every allegation.

27 ///

28 ///

1 26. As to paragraph 26 of the complaint, Defendant lacks information or belief
2 sufficient to enable him to answer this paragraph and based on this lack of information and belief
3 denies the allegations therein.

4 27. As to paragraph 27 of the complaint, Defendant lacks information or belief
5 sufficient to enable him to answer this paragraph and based on this lack of information and belief
6 denies the allegations therein.

7 28. As to paragraph 28 of the complaint, Defendant lacks information or belief
8 sufficient to enable him to answer this paragraph and based on this lack of information and belief
9 denies the allegations therein.

10 ALLEGATIONS CONCERNING PLAINTIFF UHURU COOPER

11 29. As to paragraph 29 of the complaint, Defendant lacks information or belief
12 sufficient to enable him to answer this paragraph and based on this lack of information and belief
13 denies the allegations therein.

14 30. As to paragraph 30 of the complaint, Defendant admits that he was one of several
15 officers who exited an unmarked police vehicle. As to the remaining allegations contained in
16 this paragraph, Defendant lacks information or belief sufficient to enable him to answer this
17 paragraph and, based on this lack of information or belief, denies the allegations therein.

18 31. As to paragraph 31 of the complaint, Defendant lacks information or belief
19 sufficient to enable him to answer this paragraph and based on this lack of information and belief
20 denies the allegations therein.

21 32. As to paragraph 32 of the complaint, Defendant lacks information or belief
22 sufficient to enable him to answer this paragraph and based on this lack of information and belief
23 denies the allegations therein.

24 33. As to paragraph 33 of the complaint, Defendant lacks information or belief
25 sufficient to enable him to answer this paragraph and based on this lack of information and belief
26 denies the allegations therein.

27 34. As to paragraph 34 of the complaint, Defendant denies that Plaintiff was arrested
28 and imprisoned without reasonable or probable cause. As to the remaining allegations contained

1 in this paragraph, Defendant lacks information or belief sufficient to enable him to answer this
 2 paragraph and, based on this lack of information or belief, denies the allegations therein.

3 35. As to paragraph 35 of the complaint, Defendant lacks information or belief
 4 sufficient to enable him to answer this paragraph and based on this lack of information and belief
 5 denies the allegations therein.

6 36. As to paragraph 36 of the complaint, Defendant lacks information or belief
 7 sufficient to enable him to answer this paragraph and based on this lack of information and belief
 8 denies the allegations therein.

9 37. Paragraphs 37 through 43 were omitted from the complaint.

10 38. Paragraphs 37 through 43 were omitted from the complaint.

11 39. Paragraphs 37 through 43 were omitted from the complaint.

12 40. Paragraphs 37 through 43 were omitted from the complaint.

13 41. Paragraphs 37 through 43 were omitted from the complaint.

14 42. Paragraphs 37 through 43 were omitted from the complaint.

15 43. Paragraphs 37 through 43 were omitted from the complaint.

16 CAUSES OF ACTION

17 FIRST CAUSE OF ACTION (42 U.S.C. § 1983)

18 (Against Defendant Gutierrez and DOES 1-100)

19 44. As to paragraph 44 of the complaint, the paragraph contains no factual allegations
 20 and as such no response is required. However, if a response is deemed necessary, Defendant
 21 lacks sufficient knowledge to either admit or deny the allegations and, on that basis, denies
 22 generally and specifically each and every allegation.

23 45. As to paragraph 45 of the complaint, this paragraph contains statements and
 24 conclusions of law to which no response is required. To the extent that this paragraph contains
 25 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
 26 and, on that basis, denies generally and specifically each and every allegation.

27 ///

28 ///

1 SECOND CAUSE OF ACTION (42 U.S.C. § 1983)

2 (Against Defendant City, Richard Word, and DOES 1-100)

3 46. As to paragraph 46 of the complaint, the paragraph contains no factual allegations
4 and as such no response is required. However, if a response is deemed necessary, Defendant
5 lacks sufficient knowledge to either admit or deny the allegations and, on that basis, denies
6 generally and specifically each and every allegation.

7 47. As to paragraph 47 of the complaint, this paragraph contains statements and
8 conclusions of law to which no response is required. To the extent that this paragraph contains
9 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
10 and, on that basis, denies generally and specifically each and every allegation.

11 48. As to paragraph 48 of the complaint, Defendant lacks information or belief
12 sufficient to enable him to answer this paragraph and based on this lack of information and belief
13 denies the allegations therein.

14 49. As to paragraph 49 of the complaint, this paragraph contains statements and
15 conclusions of law to which no response is required. To the extent that this paragraph contains
16 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
17 and, on that basis, denies generally and specifically each and every allegation.

18 50. As to paragraph 50 of the complaint, this paragraph contains statements and
19 conclusions of law to which no response is required. To the extent that this paragraph contains
20 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
21 and, on that basis, denies generally and specifically each and every allegation.

22 51. As to paragraph 51 of the complaint, this paragraph contains statements and
23 conclusions of law to which no response is required. To the extent that this paragraph contains
24 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
25 and, on that basis, denies generally and specifically each and every allegation.

26 52. As to paragraph 52 of the complaint, this paragraph contains statements and
27 conclusions of law to which no response is required. To the extent that this paragraph contains
28 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations

1 and, on that basis, denies generally and specifically each and every allegation.

2 THIRD CAUSE OF ACTION (42 U.S.C. § 1983)

3 (Against Defendant Word and DOES 1-100)

4 53. As to paragraph 53 of the complaint, the paragraph contains no factual allegations
5 and as such no response is required. However, if a response is deemed necessary, Defendant
6 lacks sufficient knowledge to either admit or deny the allegations and, on that basis, denies
7 generally and specifically each and every allegation.

8 54. As to paragraph 54 of the complaint, the paragraph contains no factual allegations
9 and as such no response is required. However, if a response is deemed necessary, Defendant
10 lacks sufficient knowledge to either admit or deny the allegations and, on that basis, denies
11 generally and specifically each and every allegation.

12 55. As to paragraph 55 of the complaint, Defendant lacks information or belief
13 sufficient to enable him to answer this paragraph and based on this lack of information or belief,
14 denies the allegations therein.

15 56. As to paragraph 56 of the complaint, Defendant lacks information or belief
16 sufficient to enable him to answer this paragraph and based on this lack of information or belief,
17 denies the allegations therein.

18 57. As to paragraph 57 of the complaint, Defendant denies the allegations as they
19 pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to
20 enable him to answer the allegations and, on that basis, denies generally and specifically each
21 and every allegation.

22 58. As to paragraph 58 of the complaint, this paragraph contains statements and
23 conclusions of law to which no response is required. To the extent that this paragraph contains
24 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
25 and, on that basis, denies generally and specifically each and every allegation.

26 59. As to paragraph 59 of the complaint, this paragraph contains statements and
27 conclusions of law to which no response is required. To the extent that this paragraph contains
28 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations

1 and, on that basis, denies generally and specifically each and every allegation.

2 FOURTH CAUSE OF ACTION (42 U.S.C. § 19895-86)

3 (Against Defendants City of Oakland, Word, Gutierrez and DOES 1-100)

4 60. As to paragraph 60 of the complaint, this paragraph contains statements and
5 conclusions of law to which no response is required. To the extent that this paragraph contains
6 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
7 and, on that basis, denies generally and specifically each and every allegation.

8 61. As to paragraph 61 of the complaint, Defendant denies the allegations as they
9 pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to
10 enable him to answer the allegations and, on that basis, denies generally and specifically each
11 and every allegation.

12 62. As to paragraph 62 of the complaint, this paragraph contains statements and
13 conclusions of law to which no response is required. To the extent that this paragraph contains
14 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
15 and, on that basis, denies generally and specifically each and every allegation.

16 63. As to paragraph 63 of the complaint, Defendant denies the allegations as they
17 pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to
18 enable him to answer the allegations and, on that basis, denies generally and specifically each
19 and every allegation.

20 64. As to paragraph 64 of the complaint, this paragraph contains statements and
21 conclusions of law to which no response is required. To the extent that this paragraph contains
22 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
23 and, on that basis, denies generally and specifically each and every allegation.

24 65. As to paragraph 65 of the complaint, Defendant denies the allegations as they
25 pertain to him. As to the other Defendants, Defendant lacks information or belief sufficient to
26 enable him to answer the allegations and, on that basis, denies generally and specifically each
27 and every allegation.

28 66. As to paragraph 66 of the complaint, this paragraph contains statements and

1 conclusions of law to which no response is required. To the extent that this paragraph contains
2 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
3 and, on that basis, denies generally and specifically each and every allegation.

4 STATEMENT OF DAMAGES

5 67. As to paragraph 67 of the complaint, the paragraph contains no factual allegations
6 and as such no response is required. However, if a response is deemed necessary, Defendant
7 lacks sufficient knowledge to either admit or deny the allegations and, on that basis, denies
8 generally and specifically each and every allegation.

9 68. As to paragraph 68 of the complaint, this paragraph contains statements and
10 conclusions of law to which no response is required. To the extent that this paragraph contains
11 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
12 and, on that basis, denies generally and specifically each and every allegation.

13 69. As to paragraph 69 of the complaint, this paragraph contains statements and
14 conclusions of law to which no response is required. To the extent that this paragraph contains
15 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
16 and, on that basis, denies generally and specifically each and every allegation.

17 70. As to paragraph 70 of the complaint, this paragraph contains statements and
18 conclusions of law to which no response is required. To the extent that this paragraph contains
19 factual allegations, Defendant lacks sufficient knowledge either to admit or deny the allegations
20 and, on that basis, denies generally and specifically each and every allegation.

21 JURY TRIAL DEMAND

22 71. As to paragraph 71 of the complaint, Defendant lacks information or belief
23 sufficient to enable him to answer this paragraph and based on this lack of information or belief,
24 denies the allegations therein.

25 **AFFIRMATIVE DEFENSES**

26 1. As a first affirmative defense to each cause of action of the complaint, Plaintiff's
27 complaint fails to state facts sufficient to constitute a cause of action against this responding
28 Defendant.

1 2. As a second affirmative defense to each cause of action of the complaint, the
2 damages allegedly sustained by Plaintiff were caused or contributed to by the intentional or
3 negligent acts and/or omissions of persons or entities other than this answering Defendant,
4 including Plaintiff himself. In the event that any fault of this answering Defendant is found to
5 have contributed to any such damages, Plaintiff's recovery, if any, from this answering
6 Defendant is limited to that percentage of Plaintiff's damages equal to the percentage by which
7 this responding Defendant's fault contributed to said damages.

8 3. As a third affirmative defense to each cause of action of the complaint, Plaintiff
9 voluntarily consented to and participated in the acts complained of, and/or he failed to mitigate
10 his damages, and said failure proximately contributed to the events and damages alleged in the
11 complaint.

12 4. As a fourth affirmative defense to each cause of action of the complaint,
13 Plaintiff's claims are barred by the doctrines of laches, estoppel and waiver, and by all
14 applicable federal and state statutes of limitation, including all claim filing requirements of the
15 California Tort Claims Act.

16 5. As a fifth affirmative defense to each cause of action of the complaint, Defendant,
17 at all times referred to in Plaintiff's complaint, acted in complete good faith and reasonably
18 within the meaning of all federal and state statutes, doctrines and judicial authorities.

19 6. As a sixth affirmative defense to each cause of action of the complaint, Defendant is
20 immune from liability pursuant to California Government Code section 820.2, as all acts and/or
21 omissions complained of by Plaintiff were discretionary acts within the meaning of said statute.

22 7. As a seventh affirmative defense to each cause of action of the complaint,
23 Plaintiff voluntarily assumed the risk of injuries and damages arising out of the subject incident,
24 and said assumption of risk acts as a complete bar to any recovery in this matter.

25 8. As an eighth affirmative defense to each cause of action of the complaint,
26 Defendant is immune from liability pursuant to California Penal Code sections 833, 833.5, 834a,
27 835, 835a, 836, 836.5 and 840 for any police conduct/action relating to the incident complained
28 of by Plaintiffs.

1 9. As a ninth affirmative defense to each cause of action of the complaint,
2 Defendant is immune from liability pursuant to California Government Code sections 820.4 and
3 820.6, as he exercised due care in the execution and enforcement of the law relative to Plaintiff
4 and/or is immune for invalid or inapplicable enactments.

5 10. As a tenth affirmative defense to each cause of action of the complaint, Defendant
6 is immune from liability under the provisions of California Government Code section 845.4 for
7 any alleged interference with the right of a prisoner to a judicial determination of the legality of
8 his confinement.

9 11. As a eleventh affirmative defense to each cause of action of the complaint,
10 Defendant as a City employee is immune from liability under the federal doctrine of qualified
11 good faith immunity as set forth in *Malley v. Briggs*, 475 U.S. 335 (1986); *Harlow v. Fitzgerald*,
12 457 U.S. 800 (1982); *Anderson v. Creighton*, 107 S. Ct. 3034 (1987); and other applicable
13 statutory and judicial authorities.

14 12. As a twelfth affirmative defense to each cause of action of the complaint, Plaintiff
15 has failed to sufficiently allege a cause of action on any federal claim for relief. Plaintiff has
16 been denied no federally protect civil right without due process of law, since due process exists
17 in the form of adequate remedies at law.

18 13. As a thirteenth affirmative defense to each cause of action of the complaint,
19 Plaintiff's complaint fails to state a claim for any constitutional violation under 42 U.S.C.
20 section 1983 against Defendant.

21 14. As a fourteenth affirmative defense to each cause of action of the complaint, no
22 municipal policy, pattern or practice caused any deprivation of Plaintiff's federal civil rights, and
23 thus under the doctrine of law announced in *Monell v. Department of Social Services*, 436 U.S.
24 658 (1978), and other applicable statutory and judicial authorities, Plaintiff is not entitled to
25 judgment against this answering Defendant.

26 15. As an fifteenth affirmative defense to each cause of action of the complaint,
27 Defendant's alleged acts were reasonable under the doctrine set forth in *Graham v. Connor*, 109
28 S. Ct. 1865 (1989) and all other applicable federal and state judicial authorities.

1 16. As a sixteenth defense to each cause of action of the complaint, Defendant is
2 immune from liability pursuant to all remaining applicable provisions of the California Tort
3 Claims Act and other relevant state and federal statutes and/or regulations.

4 17. As a seventeenth affirmative defense to each cause of action of the complaint,
5 Defendant presently has insufficient knowledge or information on which to form a belief as to
6 whether he may have additional, as yet unstated, defenses available. Defendant reserves herein
7 the right to assert additional defenses in the event discovery indicates that they would be
8 appropriate.

9 18. As a eighteenth affirmative defense to each cause of action of the complaint, all
10 actions were undertaken in good faith and with reasonable belief that said actions were valid,
11 necessary and constitutionally proper.

12 19. As a nineteenth affirmative defense to each cause of action of the complaint, at all
13 times mentioned in said complaint, Defendant acted in good faith and without malice and had
14 reasonable cause to believe that Plaintiff had committed a violation of the law.

15 20. As a twentieth affirmative defense to each cause of action of the complaint,
16 Defendant was an authorized peace officer acting in good faith, without malice, in the exercise
17 of his discretion to enforce the law; that said officer had reasonable and probable cause to
18 believe that Plaintiff did or was about to commit a crime; that only that amount of force was
19 used which was necessary and reasonable under the circumstances; and that said complaint is
20 barred by the provisions of Government Code sections 820, 820.8, 821.6 and 845.2.

21 21. As a twenty-first affirmative defense to each cause of action of the complaint, the
22 Defendant had probable cause to arrest Plaintiff.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER

WHEREFORE, this answering Defendant prays for judgment as follows:

1. That Plaintiff take nothing by reason of his complaint on file herein;
2. For reasonable attorney fees;
3. For costs of suit incurred herein; and
4. For such other and further relief as the Court deems just and proper.

DATED: January __, 2003

BURNHAM BROWN

By _____
JOHN J. VERBER
Attorneys for Defendant
JOHN GUTIERREZ

597917